



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEARTBEAT HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 3, 2020, the landlord personally served Tenant M.B. the Notice of Direct Request Proceeding. The landlord had Tenant M.B. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant M.B. has been duly served with the Direct Request Proceeding documents on March 3, 2020.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 3, 2020, the landlord served Tenant K.K. the Notice of Direct Request Proceeding by handing the documents to “a person living there.”

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on November 20, 2019, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on November 20, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2020, for \$1,350.00 in unpaid rent and \$98.10 in unpaid utilities. The 10 Day Notice provides that Tenant K.K. had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of February 12, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant K.K. and indicates that the 10 Day Notice was personally served to the tenants at 5:30 pm on February 2, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
*(a) **be signed** and dated by the landlord or tenant giving the notice,*
(b) give the address of the rental unit,
(c) state the effective date of the notice...and
(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord. I further find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated February 2, 2020, without leave to reapply.

The 10 Day Notice dated February 2, 2020 is cancelled and of no force or effect.

I note that the landlord also submitted a copy of a 10 Day Notice that was issued in January 2020. However, as the Application for Dispute Resolution states the landlord's claim relates to the 10 Day Notice dated February 2, 2020, I will not consider the January 10 Day Notice in this decision.

For the same reasons identified in the February 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent and utilities is dismissed, with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated February 2, 2020, is dismissed, without leave to reapply.

The 10 Day Notice dated February 2, 2020, is cancelled and of no force or effect.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities, with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 05, 2020

Residential Tenancy Branch